

BEFORE THE  
EMERGENCY MEDICAL SERVICES AUTHORITY  
STATE OF CALIFORNIA

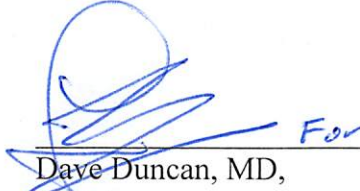
In the Matter of the Emergency Medical Technician- Paramedic License Held by: Enforcement Matter No. 19-0333  
OAH No. 2020030699

**COREY J. LOFGREN,**  
License No. P33153  
Respondent. **DECISION AND ORDER**

The attached Proposed Decision and Order dated September 18, 2020, is hereby adopted by the Emergency Medical Services Authority as its Decision in this matter. The Decision shall become effective on November 1, 2020.

It is so ordered.

DATED: 9/29/20

  
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Dave Duncan, MD,  
Director  
Emergency Medical Services Authority

**BEFORE THE  
EMERGENCY MEDICAL SERVICES AUTHORITY  
STATE OF CALIFORNIA**

**In the Matter of the Accusation Against:**

**CORY J. LOFGREN, Respondent**

**Emergency Medical Technician-Paramedic License No.  
P33153**

**Case No. 19-0333**

**OAH No. 2020030699**

**PROPOSED DECISION**

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on August 25, 2020.<sup>1</sup>

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<sup>1</sup> In light of the Governor's proclamation of a State of Emergency and Executive Orders N-25-20 and N-33-20 arising out of the COVID-19 pandemic; the declarations of county and city public health emergencies throughout the State; the directives from state and local officials to ensure and facilitate physical distancing and to shelter-in-place; and in order to protect the health and safety of all public and OAH personnel; this matter was conducted telephonically.

Cynthia Curry, Attorney, represented complainant, Sean Trask, Chief EMS Personnel Division, Emergency Medical Services Authority, State of California (EMSA).

Cory J. Lofgren, respondent, represented himself.

The matter was submitted on August 25, 2019.<sup>2</sup>

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. EMSA is responsible for coordinating and integrating all state emergency medical services. (Health and Safety Code section 1797 et seq.) As part of those duties, EMSA may discipline licensees. On March 2, 2020, complainant signed the Accusation in his official capacity. The Accusation alleged that Mr. Lofgren's license should be disciplined because in 2018 he was convicted of a substantially related crime, driving under the influence, and he excessively used or misused alcohol. Mr. Lofgren timely filed a Notice of Defense after being served with the required jurisdictional documents and this hearing ensued.

### **Respondent's License History**

2. On January 28, 2014, EMSA issued Emergency Medical Technician-Paramedic (EMT-Paramedic) License No. P33153 to Mr. Lofgren. That license is current

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<sup>2</sup> Personal identifying information was redacted from the documents post hearing.

and is valid through January 31, 2022, unless revoked or suspended. There is no history of discipline against that license.

### **Respondent's 2018 Conviction**

3. Complainant alleged that on August 27, 2018, in the District Court of the 1st Judicial District of the State of Idaho, County of Kootenai, Mr. Lofgren was convicted of violating Idaho Statute 18-8004(1)(a), Driving Under the Influence First Offense, and was sentenced to three days in jail, a DUI education program, one year of probation, and ordered to pay fines and fees. However, no court documents regarding the conviction were introduced; instead complainant only introduced the arrest records, including the arrest and probable cause affidavit, so those allegations differed from the evidence presented at this hearing.

4. In a Detailed Disclosure Statement Form Mr. Lofgren provided to EMSA,<sup>3</sup> he identified the date of his misdemeanor conviction as August 27, 2018, identified the

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<sup>3</sup> In other disclosures offered at hearing, Mr. Lofgren revealed a 2007 Idaho conviction for reckless driving and a 2009 Idaho conviction for disturbing the peace after he got into a fight. The EMSA licensing records noted that Mr. Lofgren's initial application was referred to enforcement because he had marked "No Criminal History/Pending Questions" on his application despite those two convictions. Thereafter, the case was closed with "No Further Action" and Mr. Lofgren was issued his license. Although these documents were referenced at this hearing, and did raise concerns, none of them formed the basis of any of the allegations in the Accusation so were not considered for purposes of imposing discipline, but were considered for evaluating witness credibility.

"Sentence Served" as "fine, classes, three days of jail," and stated there were "No Pending Charges. All Requirements Fullfilled [sic]." At hearing he testified that the court ordered him to pay fines, spend one night in jail, and attend an eight-hour class. He testified he was ordered to spend 180 days in jail, but that was suspended pending successful completion of his Idaho probation, which he successfully completed. Mr. Lofgren introduced a copy of the certificate confirming he completed an eight-hour "Drug and Alcohol Awareness Class" on November 20, 2018. Mr. Lofgren further explained that his driver's license was "impounded" in Idaho, but it did not affect his ability to drive in California because he was later able to renew his California driver's license without any issues when it was about to expire. No evidence contradicted Mr. Lofgren's testimony.

### **Facts and Circumstances Surrounding Mr. Lofgren's Arrest**

5. As documented in the Idaho State police report,<sup>4</sup> on May 27, 2018, at 10:25 p.m., Mr. Lofgren was stopped for speeding on the interstate. The officer observed signs of drinking, including red, watery eyes and the smell of alcohol. Mr. Lofgren admitted to drinking two beers but, upon further questioning, was not sure

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<sup>4</sup> The report was received pursuant to *Lake v. Reed* (1997) 16 Cal.4th 448, 461-464, which held that portions of a law enforcement officer's report are admissible in an administrative proceeding over a hearsay objection, including the officer's percipient observations and the party's admissions. Under Government Code section 11513, subdivision (d), [subdivision (c) when *Lake* was decided] the admissible hearsay can support a factual finding, and the remaining hearsay statements (administrative hearsay) can be used to supplement or explain other evidence on which a factual finding can be made.

how much he drank. Mr. Lofgren identified himself as a fireman from San Diego. The officer performed field sobriety tests, which Mr. Lofgren failed, and he was arrested. Two breath samples taken from Mr. Lofgren registered 0.143 and 0.141, almost twice the legal limit. While being arrested, Mr. Lofgren repeatedly asked the officer to do him and "courtesy" and "let this go," referring to his being arrested as "ridiculous."

### **Mr. Lofgren's Testimony**

6. Mr. Lofgren has been in the fire service for 14 years, 12 of which as a firefighter-paramedic. He has worked in Texas, Maryland and Washington, without incident. He has worked for the federal government for 12 years, and is currently working at Camp Pendleton in San Diego County.

Mr. Lofgren explained that he does not drink and drive because he knows the consequences; he "sees it every day." When he drinks, he takes public transports such as Uber or Lyft, or rides his electric bike so he can take the trails home. He described his 2018 DUI arrest as an "isolated" incident. He had traveled to Idaho where he met up with friends he had not seen since college and they spent the day camping, hiking, and drinking. Mr. Lofgren did not drive the entire day.<sup>5</sup> In the evening the group went to a ski resort in an extremely rural area, where they continued drinking. Mr. Lofgren explained that none of his friends was fit to drive. In fact, one friend fell off the bar stool and was kicked out of the bar because he was so intoxicated.

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<sup>5</sup> Of note, the police report documented that when Mr. Lofgren was arrested, the rental vehicle he was driving was towed and the passengers had to call a taxi because the rental agreement only allowed Mr. Lofgren to drive the vehicle.

It was Memorial Day Weekend and no taxis, Ubers, or Lyfts were available to pick the group up from the rural area. Mr. Lofgren decided to wait two hours, during which time he drank water and ate some food before deciding he was "good enough to drive." His two friends were still intoxicated. Mr. Lofgren believed he had consumed enough food and water to "absorb the alcohol." While driving, he was stopped for speeding. Mr. Lofgren claimed there was construction along the interstate and the posted speed limits kept changing so he did not realize he was exceeding the posted limit. He believes the alcohol the officer smelled was coming from his "two buddies who were really drunk." Mr. Lofgren testified that he is "not really a drinker," so he had only consumed "some beers." He asserted that except for this occasion, he has never driven after drinking, he uses public transportation or rides his electric bike on a trail.

Mr. Lofgren testified that he "did more" than the Idaho court order; he did not drink for one year and he attended six months of Alcoholics Anonymous (AA) "on my own" to "support his friend." He explained that his friend, a fellow firefighter, had "issues" so he went with him to AA meetings to support him. Sadly, his friend was "arrested again, so it did not work out."

Mr. Lofgren further explained that he does not drink for health reasons, "it is not good for you." When Mr. Lofgren saw Dr. Ayres<sup>6</sup> he had not had a drink for five months. He pointed out that Dr. Ayres concluded that Mr. Lofgren did not have a substance abuse problem. Mr. Lofgren did not understand why Dr. Ayres

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<sup>6</sup> Jerry Ayres, M.D., is an addiction medicine specialist who evaluated Mr. Lofgren at EMSA's request. His report is referenced further below.

recommended AA meetings because it "did not make sense" as Dr. Ayres had said Mr. Lofgren had "no issues."

Mr. Lofgren explained that he is appealing this matter because the terms complainant is seeking are ones he "already did." He believes that being put on probation for three years is "bothersome" because he has "moved on from this 'scar' in my career." He also does not know when he would be referred to get tested and he would come up clean because alcohol is not part of his lifestyle. He is deftly committed to patient safety and EMS safety. He understands the incident is "bothersome" because he uses narcotics for patients and there have to be standards, discipline and accountability for paramedics but there is no issue here. This incident is an isolated event, he has never been in trouble before,<sup>7</sup> and it led to him being a "better man, firefighter and paramedic." He has done these things on his own, he does not have to have "regulations put on me," on his own the past two years he has made the required changes. He understands that if he was a brand new licensee, the terms and conditions complainant is requesting would be warranted. However, the incident "happened three years ago"<sup>8</sup> and placing him on three years of probation now would mean his probation ends six years after the incident, which he does not think is "fair, right or necessary." He also claimed that the fact that the disciplinary guidelines were last updated in 2008 "seems pretty ridiculous to me" as is the fact that this hearing did

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<sup>7</sup> As noted in the documents produced, the statement was not true as Mr. Lofgren does have two prior convictions.

<sup>8</sup> In actuality, the acts leading to his conviction occurred only two years and four months before this hearing and his conviction occurred just two years before this hearing.



not occur until two and one-half years after the incident. He believed the matter should have been brought sooner.

Mr. Lofgren testified that he is very passionate about his job and his community. He now owns a place in northern Idaho where he goes often to ski and snowboard. While there, he does not go to town, he does not drink when he is out because he now knows there are no Ubers or Lyfts.

On cross-examination Mr. Lofgren admitted that he started drinking again "a couple of months" before this hearing. It is "a social thing" for him. When he is on a date, he likes to have a glass of wine or he likes to have a drink with colleagues at happy hour. He was abstinent while attending six months of AA. He uses Uber if he drinks or rides his electric bike.

### **Dr. Ayres's Report**

7. Jerry Ayers, M.D., is an Addiction Medicine specialist. On February 11, 2020, Dr. Ayres evaluated Mr. Lofgren for substance abuse disorder after EMSA advised Mr. Lofgren he needed to be evaluated by an addiction specialist because of his arrest. Dr. Ayres's medical evaluation and examination included a one-hour face-to-face with Mr. Lofgren. Dr. Ayres noted that Mr. Lofgren "gives no history of previous arrests," which was contrary to the disclosure statements Mr. Lofgren provided EMSA, raising concerns about the extent of Mr. Lofgren's being forthcoming with Dr. Ayres.

Dr. Ayres noted that "Mr. Lofgren had his first drink at age 7; he had two or three beers with friends. After that, he would have two to three beers with friends after work. His drinking pattern currently is two to three drinks one to two times a week. He says that he learned a lesson from his DUI, and is now sure to control his drinking and

taking an Uber instead of driving after drinking." Mr. Lofgren began drinking again in December 2019.

Dr. Ayres opined that the "physical examination and mental status examination are within normal limits; his insight seems good." Mr. Lofgren's witnessed urine toxicology screen was "negative for all commonly abused substances today." The "CURES<sup>9</sup> shows no controlled substances prescribed over the last 12 months." However, the SASSI-4<sup>10</sup> administered did "signal an elevated probability of substance use disorder." Dr. Ayres gave the following "DSM<sup>11</sup> Diagnostic Formulation" diagnosis:

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<sup>9</sup> CURES is the acronym for Controlled Substance Utilization Review and Evaluation System, a database of Schedule II, III and IV controlled substance prescriptions dispensed in California.

<sup>10</sup> SASSI-4 is the acronym for Adult Substance Abuse Subtle Screening Inventory-4, a test used to identify high or low probability of substance use disorders. The test includes a prescription drug scale that identifies individuals likely to be abusing prescription medications. It also provides a measure of profile validity and clinical insight into level of defensiveness and willingness to acknowledge experienced consequences of substance use disorder.

<sup>11</sup> DSM is the acronym for the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* which provides the diagnostic criteria used by psychologists and medical doctors to diagnose mental health conditions. The current version is *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)*. The *DSM-5* no longer uses multiaxial diagnosing, it was not explained why Dr. Ayres did.

Axis I: Alcohol Misuse

Axis II: n/a

Axis III: n/a

Axis IV: Stressors mild except for current licensure/legal challenges

Axis V: GAF=97

Dr. Ayres concluded:

[Mr.] Lofgren gives a history that does not meet the clinical criteria of alcohol use disorder per the DSM-V [sic] criteria. Chemical dependency treatment is not likely to be of much benefit. [Mr. Lofgren] Cory states his last drink was 1½ months ago and he denies concerns with drinking. He currently tests negative for substances of abuse, including alcohol, and shows no evidence of physical sequelae [sic] from alcohol abuse. I recommended complete abstinence as a safest approach to his career, and considering participating in Alcoholics Anonymous 1 time per week as a tool to reinforce abstinence. He states he plans to never drive after drinking again. Since there does not appear to be any clear evidence of functional impairment, he appears to have a good prognosis for ongoing safe employment.

## Letters of Reference

8. Mr. Lofgren submitted three letters of reference. Camp Pendleton Fire Department, Division Chief Carlos Camarena authored a letter dated August 1, 2020, noting it was "an honor and with great pleasure" to support Mr. Lofgren. Chief Camarena has been in the fire service for 34 years and has been a Fire Instructor for California State Fire Training. He has known Mr. Lofgren for approximately four years, having served as his Division Chief for the last three years. Chief Camarena observed Mr. Lofgren "perform and grow in the California and Department of Defense Fire Service." Chief Camarena wrote:

Firefighter/Paramedic Lofgren possesses traits required of a firefighter/paramedic in today's fire service. He possesses outstanding paramedicine skills, an abundance of operational all risk experience, and superb customer service skills never losing sight of what's best for the community he serves. He is well respected among his peers at the Camp Pendleton Fire Department. The following is just a summation of my personal observations of Firefighter/Paramedic Lofgren throughout my acquaintance and personal observations of him.

Firefighter/Paramedic Lofgren is an industrious and versatile individual who approaches any task enthusiastically. He is a skillful paramedic with the proven ability to attain a high standard of performance in any endeavor. Readily adaptable to changes in policy, procedure, or assigned workload, he always gives a personal contribution as a

special effort to ensure cohesiveness and uniformity. He has established a good rapport with his patients he comes in contact with, allied fire agencies, hospitals, military base personnel as well as his subordinates and does not hesitate to provide personal or professional assistance, when needed, and to encourage their trust through his genuine interest in their problems.

Firefighter/Paramedic Lofgren is a dedicated professional who thrives on new challenge and responsibility. A continuing source of new ideas, he invariably submits well thought out and thoroughly evaluated plans to improve the efficiency of The Camp Pendleton Fire Department. Throughout the time I have known and observed Firefighter/Paramedic Lofgren his performance continues to be underscored by pride, self-improvement, and accomplishment. He gets the job done regardless of circumstances. Favorable personal traits include; [sic] organized, efficient, charismatic, bold, and a sense of purpose and vision not evidenced in his contemporaries. I consider Firefighter/Paramedic Lofgren a subject matter expert in paramedicine and personally have tasked to coach and mentor new EMT's and paramedics because of such qualities.

Firefighter/Paramedic Lofgren [sic] honesty and integrity, coupled with his outstanding operational and technical

competence, generates immediate confidence in his abilities by all with whom he comes in contact. His thoughtfulness, concern and compassion for United States Marine Corps and the community he serves and protects further enhance his strong abilities. He believes in the proper training and professional development of all subordinates is a matter of personal concern and prime importance, and he has adeptly integrated this feeling into daily operations.

In summary, Firefighter/Paramedic Lofgren [s/c] sustained superior performance has been an inspiration to his peers and fellow firefighters. The deep respect and sincere affection he receives from his customers and peers manifest his superlative [s/c] qualities of leadership, integrity and professional knowledge. His example has fostered unparalleled productivity and esprit de corps. His extraordinary professionalism, initiative, and loyal dedication to duty reflects great pride upon himself and are in keeping with the highest traditions of the California Fire Service.

Nothing in the letter referenced the DUI conviction or whether Mr. Lofgren made any changes in his behavior or life since the conviction, making it not persuasive on the issue of rehabilitation.

9. Matt Rios, Assistant Chief of EMS, Navy Southwest Region Fire & EMS Services, in an undated letter to EMSA, wrote that he has known Mr. Lofgren for five

years in various capacities, including field training. He wrote that Mr. Lofgren has "many fine qualities," noting:

I have had the chance to get to know [Mr. Lofgren], and I say without a doubt that you are dealing with a person of very good moral character who had a brief lapse in judgement at that time. Cory operates with integrity, and never demonstrated any reason to assume or suspect there may be an issue with alcohol, nor has he ever been suspected of coming to work under the influence. He is also hard working and dedicated, and never leaves a job unfinished.

On a personal level, may I just say that I really like [Mr. Lofgren], and I have no doubts about his abilities to succeed in the future. I am sure if given a second chance he will not allow himself to repeat such behavior or bad decisions again.

10. John J. Ruhlman, President/CEO, of Mission Deck and Patio, wrote a letter "To whom it may concern" dated August 5, 2020. In it he wrote:

I have known [Mr. Lofgren] for the better part of 20 years, first serving as his college pastor at Shadow Mountain Community Church beginning in 1999 when [Mr. Lofgren] was serving in the Navy.

In the winter of 2017 [Mr. Lofgren] moved back to San Diego county, taking a new job as a firefighter/paramedic at

Camp Pendleton. Shortly after that, I moved to north county [sic] to launch a new business and we thought it smart to save on our living expenses and become roommates. Now, for over 3 years, [Mr. Lofgren] and I have resided together, first in his rented home in Vista, and now in his new condo in Oceanside.

Over the 20+ years I have known [Mr. Lofgren], I have found him to be a man of impeccable character. In a living situation where over the years we see it all, [Mr. Lofgren]'s #1 focus is serving in his role as a first responder. There is nothing that takes precedence over his commitment to saving the lives of others.

One of the ways [Mr. Lofgren's] behavior illustrates this commitment is by ALWAYS using an Uber driver if he chooses to have a drink of alcohol. Due to the horrors that [Mr. Lofgren] has seen over the years at his job, he will never drink and drive. Ever. Period. Sometimes even to the annoyance of those around him. If he is going to a friend's house to have a beer . . .he ubers [sic] over to that friend's house. . . even before he's had a drink. Periodically I have driven [Mr. Lofgren] back the next morning to pick up his car since he had a drink the night before and then wisely chose to Uber home.

Nothing in this letter referenced the DUI conviction or any behavioral changes since the conviction, making it not persuasive on the issue of rehabilitation. Moreover,



Mr. Ruhlman's statement about Mr. Lofgren's using an Uber "to the annoyance of those around him" was concerning, suggesting that "those around" Mr. Lofgren do not appreciate the seriousness of drinking and driving.

## **Disciplinary Guidelines**

11. EMSA developed disciplinary guidelines in consultation with EMS constituent groups from across the state. The purpose of the guidelines is to provide consistent and equitable discipline in cases dealing with violations of the Health and Safety Code. EMSA uses the guidelines as a standard in settling disciplinary matters and directs administrative law judges to use them as a guide in fashioning a disciplinary recommendation in a contested matter. The recommended discipline should be imposed in the absence of any aggravating or mitigating evidence. If an administrative law judge recommends discipline that is less than the minimum or which exceeds the maximum, the guidelines require that a full explanation be included to make clear why the case warrants unusual consideration. EMSA's director has the final determination related to administrative discipline.

The guidelines outline the factors to be considered in determining the measure of discipline to be imposed. Those factors include: the nature and severity of the act(s), offense(s), or crime(s) under consideration; the actual or potential harm to the public; the actual or potential harm to any patient; prior disciplinary record; prior warnings on record or prior remediation; the number and/or variety of current violations; the aggravating and mitigating evidence; any discipline imposed by the paramedic's employer for the same occurrence or conduct; rehabilitation evidence; compliance with terms of the sentence and/or court-ordered probation; overall criminal record; time that has elapsed since the act(s) or offense(s) occurred; and evidence of Penal Code section 1203.4 expungement proceedings. Those factors were considered.

Under EMSA guidelines, the conviction for any crime that is substantially related to the qualifications, functions, and duties of prehospital personnel carries a maximum disciplinary recommendation of revocation and a minimum disciplinary recommendation of revocation stayed, with one year of probation with terms and conditions.

Under EMSA guidelines, addiction to, the excessive use of, or misuse of, alcohol carries a maximum disciplinary recommendation of revocation and a minimum disciplinary recommendation of revocation stayed, with three years of probation with terms and conditions, including the imposition of several optional conditions.

The guidelines contain criteria to be considered when determining rehabilitation for alcohol abuse offenses. Those criteria were considered.

## **LEGAL CONCLUSIONS**

### **Purpose of Administrative Discipline**

1. Administrative proceedings to revoke, suspend, or impose discipline on a professional license are nonpenal; they are not intended to punish the licensee, but rather to protect the public. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 768.)

### **The Standard of Proof**

2. The standard of proof in an administrative action seeking to suspend or revoke a certificate that requires substantial education, training, and testing is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

3. Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; sufficiently strong to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

4. Substantial education, training, and experience is required to apply for a paramedic license in California, and the applicant must pass a nationwide written and practical qualifying examination before licensure; a licensee must meet continuing education requirements after licensure. On this basis, the clear and convincing standard of proof applies in this disciplinary proceeding.

### **Relevant Statutory and Regulatory Authority**

5. The scope of practice of an EMT-Paramedic is set forth in the Health and Safety Code sections 1797.52 and 1797.172, and California Code of Regulations, title 22, section 100146.

6. Health and Safety Code section 1797.172 provides that EMSA is solely responsible for licensure and licensure renewal of EMT-Paramedics.

7. Health and Safety Code section 1798.200, subdivision (b), authorizes EMSA to discipline its licensees. Subdivision (c) identifies those actions "considered evidence of a threat to the public health and safety" that may result in discipline including: conviction of any crime that is substantially related to the qualifications, functions, and duties of prehospital personnel [Subdivision (c)(6)]; and the addiction to, the excessive use of, or the misuse of, alcoholic beverages, narcotics, dangerous drugs, or controlled substances. [Subdivision (c)(9)].

8. California Code of Regulations, title 22, section 100173, provides that the administrative law judge “shall use” the EMSA guidelines when making recommendations for discipline.

9. California Code of Regulations, title 22, section 100175, provides that, for the purposes of disciplining a license pursuant to Health and Safety Code section 1798.200, a crime or act is “substantially related” if it evidences present or potential unfitness of a paramedic to perform the functions authorized by the license in a manner consistent with the public health and safety. The record of conviction or a certified copy of the record shall be conclusive evidence of the conviction.

### **Cause Exists to Impose Discipline**

10. Cause exists to discipline Mr. Lofgren’s license under Health and Safety Code section 1798.200, subdivision (c)(6). Complainant established by clear and convincing evidence that Mr. Lofgren was convicted of a substantially related crime.

11. Cause exists to discipline Mr. Lofgren’s license under Health and Safety Code section 1798.200, subdivision (c)(9). Complainant established by clear and convincing evidence that Mr. Lofgren excessively used or misused alcohol, and, while under the influence, drove his vehicle.

### **Rehabilitation**

12. Once cause for discipline is found, a Mr. Lofgren has the burden of proof to show that he or she is rehabilitated. (*Whetstone v. Board of Dental Examiners* (1927) 87 Cal.App. 156, 164.)

13. California Code of Regulations, title 22, section 100176, outlines the following rehabilitation criteria to be considered when determining discipline:

- (1) The nature and severity of the act(s) or crime(s).
- (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial, placement on probation, suspension, or revocation which also could be considered grounds for denial, placement on probation, suspension, or revocation under Section 1798.200 of the Health and Safety Code.
- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsection (1) or (2) of this section.
- (4) The extent to which the person has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the person.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Evidence, if any, of rehabilitation submitted by the person.

Those criteria were considered in this decision.

14. Mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is presented by sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.) The evidentiary significance of an individual's misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.)

## **Evaluation**

15. Mr. Lofgren's act of driving while under the influence of alcohol and his conviction for DUI were substantially related to the duties of a paramedic as they evidenced his present or potential unfitness to perform the functions authorized by his license in a manner consistent with the public health and safety. His actions demonstrated poor judgment, put the public at risk, and involved the excessive use and/or abuse of alcohol.

Mr. Lofgren did not clearly express any remorse for his conduct; instead his testimony focused on how this was an isolated incident and unique circumstances surrounding the events that evening led to his operating a motor vehicle while under the influence. He also voiced displeasure with the possibility of being placed on probation, noting he has done everything EMSA would order by himself and does not require supervision. His testimony in this regard was unpersuasive as reasons not to be placed on probation and some of his testimony indicated he did not fully appreciate the gravity of the situation. Although the letters of support from his supervisors were laudable, they were insufficient in light of the other evidence presented and his friend's letter was troublesome.

Despite Dr. Ayres's recommendations, Mr. Lofgren did not attend AA meetings for himself, instead going only because his friend had an issue. Mr. Lofgren has not abstained from drinking alcohol, as Dr. Ayres recommended, and it did not appear that he had been fully forthcoming with Dr. Ayres during the evaluation or when testifying, since he claimed to have no other issues despite having suffered two convictions before the conviction that was the subject of this matter. Mr. Lofgren's testimony about riding his electric bike after drinking was worrisome. It was unclear how operating an electric bike after drinking was safe. It is not plausible that he is on a

"trail" the entire time he operates his electric bike because between leaving a restaurant or bar and accessing his residence, there are likely some points where he is riding on public roads or rights of way.

Mr. Lofgren's testimony at this hearing suggested he did not fully appreciate the seriousness of his conduct. His testimony coupled with the statements attributed to him in the police report, wherein he tried to dissuade the officer from arresting him, identified himself as a San Diego fireman, asked for a "courtesy," and called his arrest "ridiculous," were troubling and are considered here as aggravating factors because they demonstrated both a consciousness of guilt and a desire to use his position to avoid responsibility.

In light of all the evidence presented, a period of probation with terms and conditions is necessary to protect the public.

## **ORDER**

Paramedic License Number P33153 issued to respondent, Cory J. Lofgren, is revoked. However, that revocation is stayed and respondent is placed on probation for three (3) years upon the following terms and conditions. Each condition of probation set forth hereafter is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other conditions and applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

### **1. Probation Compliance:**

Respondent shall fully comply with all terms and conditions of the probationary order. Respondent shall fully cooperate with EMSA in its monitoring, investigation, and evaluation of respondent's compliance with the terms and conditions of this probationary order.

Respondent shall immediately execute and submit to EMSA all Release of Information forms that EMSA may require of respondent.

**2. Personal Appearances:**

As directed by EMSA, respondent shall appear in person for interviews, meetings, and/or evaluations of respondent's compliance with the terms and conditions of the probationary order. Respondent shall be responsible for all of the costs associated with this requirement.

**3. Quarterly Report Requirements:**

During the probationary period, respondent shall submit quarterly reports covering each calendar quarter which he shall certify, under penalty of perjury, and document his compliance with all the terms and conditions of his probation. If respondent submits his quarterly reports by mail, the reports shall be sent by certified mail.

**4. Employment Notification:**

During the probationary period, respondent shall notify EMSA in writing of any EMS employment. Respondent shall inform EMSA in writing of the name and address of any prospective EMS employer prior to accepting employment.



Additionally, respondent shall submit proof in writing to EMSA of disclosure, by respondent, to his current and any prospective EMS employer of the reasons for and terms and conditions of respondent's probation.

Respondent authorizes any EMS employer to submit performance evaluations and other reports which EMSA may request that relate to the qualifications, functions, and duties of prehospital personnel.

Any and all notifications to EMSA shall be by certified mail.

**5. Notification of Termination:**

Respondent shall notify EMSA within seventy-two (72) hours after termination, for any reason, with his prehospital medical care employer. Respondent must provide a full, detailed written explanation of the reasons for and circumstances of any such termination.

Any and all notifications to EMSA shall be by certified mail.

**6. Functioning as a Paramedic:**

The period of probation shall not run during anytime that respondent is not practicing as a paramedic within the jurisdiction of California.

If respondent, during his probationary period, leaves the jurisdiction of California to practice as a paramedic, respondent must immediately notify EMSA, in writing, of the date of such departure and the date of return to California, if respondent returns.

Any and all notifications to EMSA shall be by certified mail.

**7. Obey All Related Laws:**

Respondent shall obey all federal, state, and local laws, statutes, regulations, and local written policies, protocols and rules governing the practice of medical care as a paramedic. Respondent shall not engage in any conduct that is grounds for disciplinary action pursuant to Section 1798.200. To permit monitoring of compliance with this term, if respondent has not submitted fingerprints to EMSA in the past as a condition of licensure, then respondent shall submit his fingerprints by Live Scan or by fingerprint cards and pay the appropriate fees within forty-five (45) days of the effective date of this decision.

Within seventy-two (72) hours of being arrested, cited or criminally charged for any offense, respondent shall submit to EMSA a full and detailed account of the circumstances thereof. EMSA shall determine the applicability of the offense(s) as to whether respondent violated any federal, state and local laws, statutes, regulations, and local written policies, protocols and rules governing the practice of medical care as a paramedic.

Any and all notifications to EMSA shall be by certified mail.

**8. Abstinence from the Use of Alcoholic Beverages:**

Respondent shall abstain from the use of alcoholic beverages.

**9. Biological Fluid Testing:**

Respondent shall submit to routine and random biological fluid testing or drug/alcohol screening as directed by EMSA or its designee. Respondent may use a lab pre-approved by EMSA or may provide to EMSA the name and location of an independent laboratory or drug/alcohol testing facility for approval by EMSA. EMSA

shall have sole discretion for lab approval based on criteria regulating professional laboratories and drug/alcohol testing facilities. When EMSA requests a random test, respondent shall provide the required blood/urine sample by the time specified or within twelve (12) hours of the request if no time is specified. When EMSA requests a random test, respondent shall ensure that any positive test results are conveyed telephonically by the lab to EMSA within forty-eight (48) hours, and all written positive or negative results are provided directly by the lab to EMSA within ten (10) days. Respondent shall be responsible for all costs associated with the drug/alcohol screening.

At EMSA's sole discretion, EMSA may allow the random drug testing to be conducted by respondent's employer to meet the requirement of random drug testing as set forth above. The results of employer's random drug testing shall be made available to EMSA in the time frames described above.

**10. Attendance at Alcoholics Anonymous Program:**

During his first year of probation, respondent shall attend at least one Alcohol Anonymous (AA) meeting per week, and submit proof of attendance. After one year of probation has expired, respondent will no longer be required to attend AA meetings. In the alternative, EMSA may approve respondent's attendance at an equivalent alcohol abuse/misuse program and require proof of attendance.

**11. Completion of Probation:**

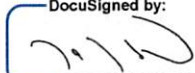
Respondent's license shall be fully restored upon successful completion of probation.

**12. Violation of Probation:**

If during the period of probation respondent fails to comply with any term of probation, EMSA may initiate action to terminate probation and implement actual license suspension/revocation. Upon the initiation of such an action, or the giving of a notice to respondent of the intent to initiate such an action, the period of probation shall remain in effect until such time as a decision on the matter has been adopted by EMSA. An action to terminate probation and implement actual license suspension/revocation shall be initiated and conducted pursuant to the hearing provisions of the California Administrative Procedure Act.

The issues to be resolved shall be limited to whether respondent has violated any term of his probation sufficient to warrant termination of probation and implementation of actual suspension/revocation. At the hearing, respondent and EMSA shall be bound by the admissions contained in the terms of probation and neither party shall have a right to litigate the validity or invalidity of such admissions.

DATE: September 18, 2020

DocuSigned by:  
  
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MARY AGNES MATYSZEWSKI

Administrative Law Judge

Office of Administrative Hearings